

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

Civil Action No. 3:12-cv-784

CHARLOTTE PLASTIC SURGERY )  
CENTER, P.A., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
THE REFINE INSTITUTE, P.A., )  
 )  
Defendant. )  
\_\_\_\_\_ )

**CONSENT ORDER**

Upon consent of the parties, Plaintiff, Charlotte Plastic Surgery Center, P.A., (“Plaintiff”), and Defendant, The Refine Institute, P.A. (“Defendant” or “Refine”), and the Court being advised and approving, IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction over the federal subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338, in that the claims arise under Sections 32 and 43 of the Lanham Act. 15 U.S.C. §§ 1114 and 1125. This Court has subject matter jurisdiction over the state claims in this case (i) pursuant to 28 U.S.C. § 1338(b), in that they are claims of unfair competition joined with substantial and related claims under the federal trademark laws and (ii) pursuant to 28 U.S.C. § 1367(a) and the principles of supplemental jurisdiction.
2. Plaintiff is a North Carolina professional association with its principal place of business located in Charlotte, North Carolina. Plaintiff’s primary business is cosmetic and plastic surgery and other cosmetic services.

3. Defendant Refine is a North Carolina professional association, with its principal place of business in Charlotte, North Carolina. Defendant's primary business is cosmetic and plastic surgery and other cosmetic services.
4. Plaintiff is the owner of a United States trademark registration for the mark "CHARLOTTE PLASTIC SURGERY" (the "Mark"), registered on September 23, 2003 on the Principal Register of the United States Trademark Office, Registration Number 2,766,711, for cosmetic and plastic surgery (the "Registration"). The Mark was registered under Section 2(f) of 15 U.S.C. 1052(f) on the basis of acquired distinctiveness or secondary meaning.
5. The Registration is valid and incontestable in accordance with 15 U.S.C. §§ 1065 and 1115(b).
6. Plaintiff has made a substantial investment in the promotion and protection of the Mark and considers it among its most important and valuable assets. Through extensive and continuous use of the Mark in connection with the provision of services since 1977, the Mark has come to be associated with Plaintiff and identifies Plaintiff as the source of the services offered in connection with the Mark.
7. Plaintiff and Defendant rely extensively on the internet to help market and promote their services. Plaintiff and Defendant are direct competitors.
8. On November 23, 2012, Plaintiff filed a Complaint seeking a permanent injunction and damages against Defendant in connection with Defendant's alleged infringement of the Mark, and in particular, Defendant's use of the Mark in various online advertising and marketing , including, without limitation, on its internet website.
9. The parties have agreed to the entry of this Consent Order to resolve the matter.

10. Defendant shall pay to Plaintiff the amount of \$12,500.00 as follows: On or before thirty (30) days of the filing of this Consent Order, Defendant shall pay to Plaintiff the sum of \$10,000.00 by check made payable to “Charlotte Plastic Surgery.” On or before ninety (90) days of the filing of this Consent Order, Defendant shall pay to Plaintiff the sum of \$2,500.00 by check made payable to “Charlotte Plastic Surgery.”
11. Defendant, on behalf of itself, its successors, assigns, licensees, directors, officers, employees, representatives, contractors, affiliates and agents, and any persons or entities in active concert or participation with them, is hereby enjoined from use of the Mark, or any other designation, symbol, or device which is confusingly similar to the Mark, regardless of font, style, or capitalization, in any manner within its control, either directly or indirectly, in any advertising or marketing in a format or form in which the Mark is visible to consumers.
12. This Consent Order does not limit Defendant’s ability to incorporate “Charlotte Plastic Surgery” into the non-visible architecture of its website or bid on Pay-per-click for “Charlotte Plastic Surgery” in any paid online advertising.
13. Defendant shall have the right to seek relief from this Order if (i) Plaintiff ceases to do business using the name Charlotte Plastic Surgery for a period of three years or (ii) there is a change in federal law as adopted and applied by the United States Court of Appeals for the Fourth Circuit which specifically permits the activities which are proscribed by this Consent Order.
14. If Plaintiff believes that a violation of this Order has occurred it shall provide Defendant written notice of the same by first-class mail to the following:
- Eric Wilson  
The Refine Institute  
7725 Ballantyne Commons Parkway  
Charlotte, North Carolina 28277

If Defendant fails to cure the violation within thirty (30) days of the date of the notice, Plaintiff may apply to this Court for enforcement of this Consent Order.

**CONSENTED TO** this 1<sup>st</sup> day of November, 2013:

**ALICE CARMICHAEL RICHEY, PLLC**

/s/Alice Carmichael Richey

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*Attorneys for Defendant  
The Refine Institute*

**SO ORDERED.**

Signed: November 1, 2013



Graham C. Mullen  
United States District Judge

